

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF VETERANS AFFAIRS

Donald C. Oien,

Petitioner,

vs.

County of Benton,

Respondent.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above entitled matter came on for hearing before Administrative Law Judge Jodie Metcalf on Wednesday, June 12, 1996 at the Foley City Council Room, Foley City Hall, 521 Fourth Avenue, Foley, Minnesota. The record closed on August 16, 1996 upon receipt of a letter from Mr. Kramer indicating that Mr. Oien had no objection to the unsolicited material provided to the Administrative Law Judge by Benton County.

Thomas E. Kramer, Attorney at Law, 26 N. Sixth Street, P.O. Box 1756, St. Cloud, Minnesota, 56302-1756 appeared on behalf of the Petitioner, Donald Oien, who was also present. Daniel A. Eller, Attorney at Law, 925 S. First Street, P.O. Box 638, St. Cloud, Minnesota 56302 appeared on behalf of the Respondent, County of Benton.

This report is a recommendation not a final decision. The Commissioner of Veterans Affairs will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained in this report. Pursuant to Minn. Stat. §14.61, the final decisions of the commissioner shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner in care of: Gerald Bender, Veterans Preference Office, Department of

Veterans Affairs, 20 West 12th Street, St. Paul, Minnesota 55155-2079.

#### STATEMENT OF ISSUES

The issue in this case is whether Donald Oien was a department head within the meaning of Minn. Stat. §197.46 and therefore exempt from the statutory protections therein.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On March 25, 1996, Donald Oien was terminated from his position as director of Data Processing by the Benton County board Chairperson. The full board ratified the termination at their next meeting.
2. The parties agree that Mr. Oien is a veteran. Attached to the Petition for Relief was a copy of Mr. Oien's DD 214 which shows that Mr. Oien served in the United States Army and the United States Air Force Reserve. "Character of Services" contains the notation "Honorable".
3. The parties agree that Mr. Oien was not given notice and a hearing pursuant to Minn. Stat. §197.46.
4. On April 8, 1996 Mr. Oien filed a petition for relief under the Veterans Preference Act.
5. Mr. Oien was hired by the County of Benton in July of 1984. At that time he was the only employee of the Data Processing Department. Mr. Oien remained the only employee until approximately 1989, when a part-time position was added to the Data Processing Department. The part-time position became a full-time position by 1995. At one point the Data Processing Department had two employees other than Mr. Oien, but one was fired. At the time of Mr. Oien's termination, there was only one employee of the Department, other than Mr. Oien.
6. Prior to his employment with Benton County, Mr. Oien had worked for 18 years for an insurance company. His primary responsibility in that position was computer programming. Mr. Oien

has a high school education and has taken various classes in programming, although he is mostly self-taught from his years of experience.

7. Although Mr. Oien does not have extensive education, it is clear that he has specialized technical skills and knowledge which are required by his position. Mr. Oien testified that he has designed computer programs for several departments including the "911" phone system for Benton County. From Mr. Oien's description of his programming and "troubleshooting" duties it is likely that any successor to this position would be required to have an Associate Arts (A.A.) or Bachelor of Arts or Sciences (B.A. or B.S.) degree.

8. Mr. Oien concedes that the employee of his department was under his direction and that he had charge of the work done by his department, although some of the data processing equipment (such as a special printer) is used by other departments.

9. The Data Processing Department provides services to other County Departments. For that reason a Data Processing Committee was created. The by-laws of the committee indicate nine "department heads" were appointed as members of the committee, specifically the Data Processing Manager (Mr. Oien), Social Service Director, County Assessor, County Auditor, County Highway Engineer, County Recorder, County Sheriff, County Treasurer and the Public Health Director.

10. The by-laws indicate that the purpose of the Data Processing Committee is to "...coordinate, review, and recommend actions (emphasis added) to the county board to optimize economic and efficient operations of the Data Processing activities."

11. The Data processing committee apparently was formed to help prioritize use of the computer system when there were conflicts between affected departments, to coordinate purchases that affect more than one department and to allow multi-departmental planning for efficiency and economy. This could result recommendations about priority of service or equipment purchases that could affect policy and planning in any department even those where the department head is an elected official (such as the County Treasurer). The County's characterization of the committee as a "users group" is an apt description.

12. Mr. Oien agrees that he was "supervised" by the County Board. Mr. Oien's own testimony indicated that he was responsible for

planning for the computer needs of Benton County, solving computer related problems and for obtaining outside consultants (such as arranging a maintenance agreement for the hardware).

13. Mr. Oien applied for the position of Data Processing Manager indicating he had experience as a "Programming Manager". At the conclusion of his probationary period, he was moved to the Department head salary schedule from the "professional, technical and supervisory" schedule, although the department had no other employees. This change did not result in any increase in salary at that point.

14. It appears that positions within the county were reviewed and compared in 1989. At that time, the position of Data Processing Manager was moved up from pay grade 28 to pay grade 29. The other position in the department was a pay grade 15 at that time. In 1995, Mr. Oien was still classified as pay grade 29 and the other position was classified as pay grade 18.

15. Mr. Oien's duties were more than merely different from the other employee of the department. This is reflected in the vast difference in pay grade (as noted above) and actual earnings. Mr. Oien estimated his annual salary as \$38,000 and that of his employee as \$20,000.

16. Mr. Oien did not have the ultimate authority to hire or fire subordinates. He did send the letter extending an offer of employment to one employee of his department and actively participated in the removal of another. However, in both instances the county board took formal action to approve the recommendation of Mr. Oien.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Commissioner of Veterans Affairs and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §197.418 and Minn. Stat. §14.57 to 14.60 and 14.62.

2. Proper notice of the hearing was timely given to the parties and all relevant substantive and procedural requirements of rule and law have been fulfilled by the Department. Notice of the date and time of the continued hearing was not properly given to Mr.

Oien, however any objection on this basis was expressly waived by Mr. Oien at the hearing.

3. The appointing authority must establish by a preponderance of the evidence that an individual is the head of a department and exempt from the protection of the Veterans Preference Act. Minn. Stat. §197.46

4. The Supreme Court has repeatedly set down eight criteria for determining whether a particular individual is a department head within the meaning of Minn. Stat. §197.46. They are:

(1) Does the alleged department head have charge of the work done by his department?

(2) Does his work require technical professional training?

(3) Is he the highest authority at that level of government as to his official duties?

(4) Does he supervise all of the work in his department?

(5) Does the success of his department depend on his technique?

(6) Are the employees in the department under his direction?

(7) Are his duties more than merely different from other employees?

(8) Does he have power to hire and fire subordinates?

State ex. rel McGinnis v. Police Civil Serv. Comm., 253 Minn. 62, 75, 91 N.W.2d 154, 163 (1958) and Phillips v. St. Paul Human and Civil Rights Comm., 276 Minn. 537, 151 N.W.2d 261 (1967)

5. Mr. Oien did have charge of the work done by his department.

6. Mr. Oien's position does require technical and/or professional training.

7. Mr. Oien was the highest authority at this level of government as to his official duties.

8. Mr. Oien did supervise all of the work in his department.

9. The success of the Data Processing department did depend on Mr. Oien's technique.

10. The employee(s) of his department are under his direction.

11. Mr. Oien's duties are more than merely different from other employee(s) of the Data Processing department.

12. Mr. Oien does not have the power to hire and fire subordinates, although he has the authority to make recommendations directly to the County Board.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs determine that Mr. Oien was a department head, and is therefore not entitled to the protection of the Veterans Preference Act Minn. Stat. §197.46.

Dated this 16th day of September, 1996

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Jodie Metcalf  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. §14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped.

#### MEMORANDUM

Benton County is a relatively small county with 19 "department heads" as of the date of the hearing in this matter. Undoubtedly many, like the Data Processing Department, are extremely small. The Administrative Law Judge is aware of Holmes v. Board of Commissioners of Wabasha County, 402 N.W.2d 642, 645 (Minn. Ct. App. 1987) citing State ex rel. McGinnis vs. Police Civil Service Commission of Golden Valley, 253 Minn. 62, 75, 91 N.W.2d 154,163 (1968) and State ex rel. Sprague v. Heise, 243 Minn. 367,373, 67 N.W.2d 907, 912 (1954) which states:

In addition, the rule that a person normally must work in a department with more than one employee in order to be classified as the head of a department is implicit in factors (6) and (7), which refer to the direction of "employees in the department" and to duties that are "more than merely different from [those of] other employees.

However, given the other relevant criteria, and the fact that the Department has, at times in the past, had two employees in addition to Mr. Oien, it is clear that Mr. Oien was the head of a department, albeit a very small one.

J.M.